TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]. 1914

No. [redacted] 427

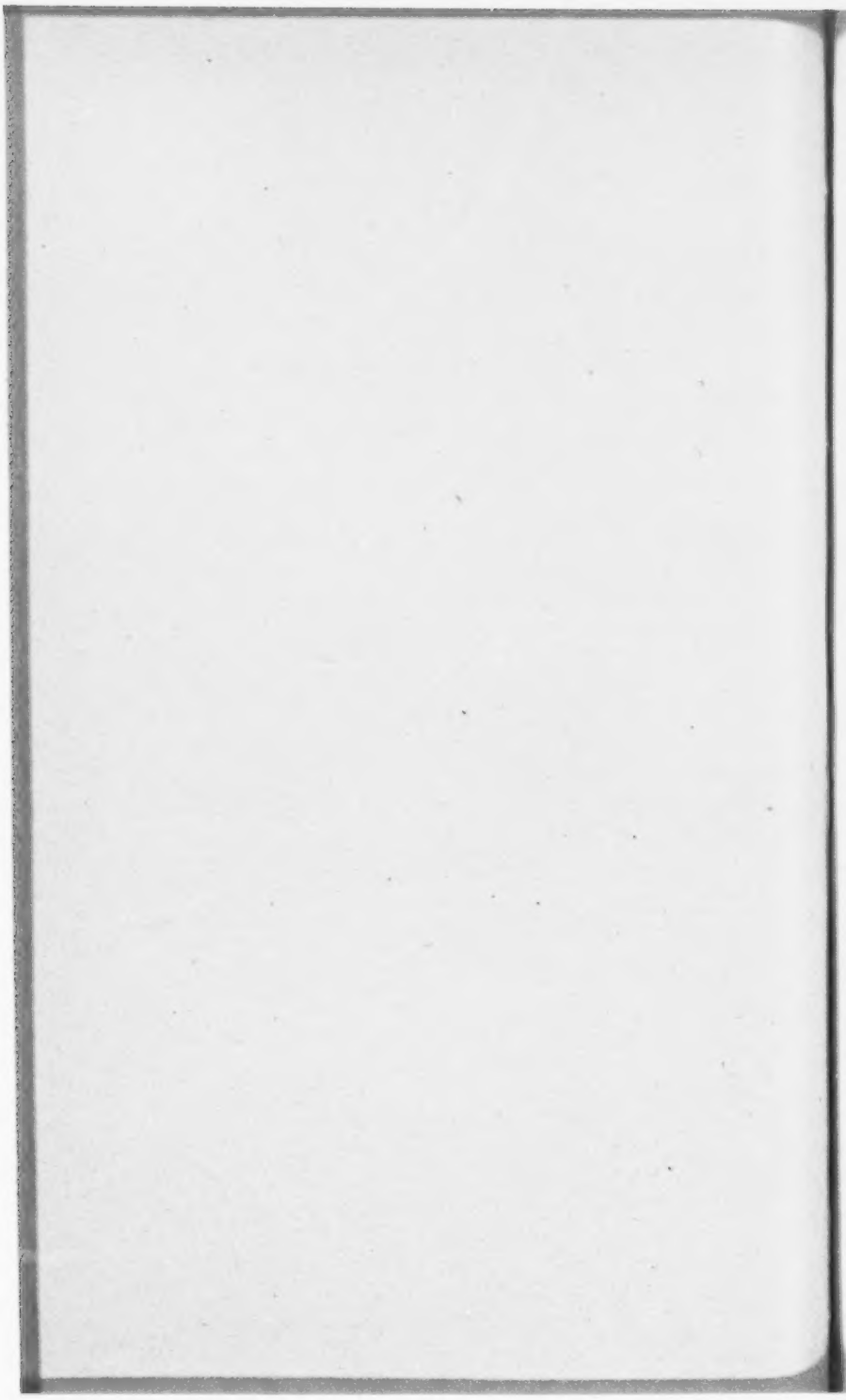
THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

WILLIAM C. NIXON, W. B. BIDDLE, AND THOMAS H. WEST, RECEIVERS OF THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED MARCH 31, 1914.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 990.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

WILLIAM C. NIXON, W. B. BIDDLE, AND THOMAS H. WEST, RECEIVERS OF THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

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a In the District Court of the United States for the Western Division of the Western District of Missouri.

UNITED STATES OF AMERICA,
vs.
WILLIAM C. NIXON, W. B. BIDDLE, AND THOMAS H. West, receivers of the St. Louis and San Francisco Railroad Company.

Citation.

UNITED STATES OF AMERICA, *ss:*

To the above-named William C. Nixon, W. B. Biddle, and Thomas H. West, receivers of the St. Louis and San Francisco Railroad Company, greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, D. C., on the 30th day of March, 1914, next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arba S. Van Valkenburgh, judge of the District Court of the United States for the Western District of Missouri, this 28th day of February, in the year of our Lord one thousand nine hundred and fourteen.

ARBA S. VAN VALKENBURGH, *Judge.*

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

We hereby acknowledge due service of the within citation this 28th day of February, A. D. 1914.

COWHERD, INGRAHAM, DURHAM & MORSE,
Attorneys for Defendants in Error.

b (Indorsed:) United States District Court, Western District of Missouri, Western Division. United States of America vs. William C. Nixon, W. B. Biddle, and Thomas H. West, receivers of the St. Louis and San Francisco Railroad Company. Citation. Filed February 28, 1914. John B. Warner, clerk, by Elizabeth Linton, d. c.

c In the District Court of the United States for the Western Division of the Western District of Missouri.

UNITED STATES OF AMERICA,
vs.
WILLIAM C. NIXON, W. B. BIDDLE, AND THOMAS H. WEST, receivers of the St. Louis and San Francisco Railroad Company.

Writ of error.

UNITED STATES OF AMERICA, *set:*

The President of the United States, to the judge of the District Court of the United States for the Western Division of the Western District of Missouri, greeting:

Because in the record and proceedings and also in the rendition of the judgment of a motion to quash which is in said District Court before you between the United States of America and William C. Nixon, W. B. Biddle, and Thomas H. West, receivers, a manifest error hath happened to the great damage of the said United States of America, as by its complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., on the 30th day of March, 1914, next, in the Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court
d may cause further to be done therein to correct that error, what of right according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the United States, and the seal of the District Court. Issued at the office in Kansas City, this 28th day of February, A. D. 1914.

[SEAL.] JOHN B. WARNER,
Clerk United States District Court
for the Western District of Missouri, Western Division.

Allowed by—
ARBA S. VAN VALKENBURGH, *Judge.*

e WESTERN DIVISION,
Western District of Missouri, set:

I do hereby return due and perfect obedience to the within writ, and do herewith, under the seal of said District Court, distinctly and openly send the record and proceedings aforesaid, with all things concerning the same.

Witness my hand as clerk and the seal of said court. Issued at office in Kansas City, Missouri, this 24th day of March, A. D. 1914.

[SEAL.] JOHN B. WARNER,
Clerk United States District Court
for the Western District of Missouri, Western Division.
By ELIZABETH LINTON,
Deputy Clerk.

f (Indorsed:) United States District Court, Western District of Missouri, Western Division. United States of America vs. William C. Nixon, W. B. Biddle, and Thomas H. West, receivers of the St. Louis and San Francisco Railroad Company. Writ of error. Filed Feby. 28, 1914. John B. Warner, clerk, by Elizabeth Linton, d. c.

1 UNITED STATES OF AMERICA, *ss:*

Be it remembered, that heretofore, to wit, at the regular November term of the United States District Court for the Western Division of the Western District of Missouri, and on the 11th day of December, A. D. 1913, the following entry appears of record, to wit:

This day come the grand jurors and make presentment as follows, to wit:

UNITED STATES *vs.* ST. LOUIS & SAN FRANCISCO R. R. CO., WM. C. NIXON, WM. B. BIDDLE, THOMAS H. WEST.	3215. Violation secs. 2 and 4, act Mch. 3, '05.

A true bill.

GEO. LAW, *Foreman.*

2 Said indictment, filed December 11th, 1913, is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Western Division, Western District of Missouri, ss:

In the District Court of the United States for the Western Division of the Western District of Missouri.

The grand jurors of the United States of America, duly and legally chosen, selected, summoned and drawn from the body of the Western Division of the Western District of Missouri, and duly and legally examined, empaneled, sworn and charged to inquire of and concerning crimes and offenses against the United States in the Western Division of the Western District of Missouri, on their oaths present and charge that on or about the 16th day of August, A. D. 1913, and at all times hereinafter mentioned, one William C. Nixon and one William B. Biddle, and one Thomas H. West were the duly appointed, qualified and acting receivers of the St. Louis and San Francisco Railroad Company, a corporation duly organized and in-

corporated according to law, and that as such receivers the said William C. Nixon and the said William B. Biddle and the said Thomas H. West on the 16th day of August, A. D. 1913, had charge of and were managing, conducting, and operating the property and business of said corporation as a common carrier of freight, live stock, cattle, and other animals for hire in interstate commerce from Hugo, Choctaw County, in the State of Oklahoma, to Kansas City, Jackson County, in the State of Missouri: that on or about the 16th day of August, 1913, at Hugo, Choctaw County, Oklahoma, a certain shipment of thirty-eight head of cattle, consigned by H. L. Sanguin to the Clay-Robinson Live Stock Commission Company, Kansas City, Missouri, was delivered to the St. Louis and San Francisco Railroad Company, and said receivers for transportation
3 from Hugo, Choctaw County, Oklahoma, to Kansas City, Jackson County, Missouri, and which said shipment was by said Railroad Company and said receivers transported in M. K. & T. car number 40669, in interstate commerce from Hugo, Choctaw County, Oklahoma, to Kansas City, Jackson County, Missouri, and delivered to the Clay-Robinson Live Stock Commission Company as aforesaid.

And the grand jurors aforesaid, on their oaths aforesaid, do further present and charge that the Secretary of Agriculture of the United States, pursuant to and by virtue of the power and authority in him vested by the act of Congress of the United States approved March 3, 1905, did on or about the 7th day of February, 1913, determine the fact to be that within certain portions of the State of Oklahoma, and more particularly within and including the county of Choctaw, in the State of Oklahoma, there existed among the cattle a contagious and infectious disease known as splenetic, southern, or Texas fever, and did on or about the 7th day of February, 1913, in accordance with the law in such cases made and provided, make, issue, and promulgate an order quarantining certain portions of the State of Oklahoma, and more particularly and including the county of Choctaw, in the State of Oklahoma, and did forbid the removal or transportation of cattle from said county of Choctaw, in the State of Oklahoma, into any other State or Territory in the United States not within the quarantined district so established by the said Secretary of Agriculture of the United States, except in accordance with the rules and regulations made and promulgated by the Secretary of Agriculture of the United States, and then in full force and effect; that the said order and regulation of said Secretary of Agriculture was duly published, in accordance with law, in The Daily Oklahoman, a newspaper duly and regularly published in Oklahoma City, Oklahoma, in its issue of February 25, 1913; that
notice of said order made, issued, and promulgated by the
4 Secretary of Agriculture as aforesaid was duly and legally served upon said defendant, St. Louis and San Francisco Railroad Company, by service upon F. C. Reilly, assistant freight traffic manager of said railroad company, at St. Louis, Missouri, a duly

and legally qualified agent of said railroad company, and service thereof was duly acknowledged on March 10, 1913.

That the Secretary of Agriculture of the United States, pursuant to and by virtue of the power and authority in him vested by the act of Congress of the United States approved March 3, 1905, did on or about the 17th day of March, 1909, make, issue, and promulgate the following rule and regulation governing the transportation of cattle and other live stock from the territory quarantined under the law hereinbefore referred to, and made, issued, and promulgated by the said Secretary of Agriculture of the United States as aforesaid, as follows:

"The proper officers of the transportation companies shall securely affix to both sides of all cars carrying interstate shipments of cattle from the quarantined area (except those accompanied by certificates of inspection issued by inspectors of the Bureau of Animal Industry, covering shipments of cattle dipped as provided in Regulation 17 hereof, and shipments of cattle from certain areas described in the 'Rule to prevent the spread of splenetic fever in cattle,' which rule should be construed in connection with these regulations) durable placards not less than 5½ by 8 inches in size, on which shall be printed with permanent black ink and in bold-face letters not less than 1½ inches in height the words 'Southern Cattle.' These placards shall also show the name of the place from which the shipment was made, the date of the shipment (which must correspond with the date of the waybills and other papers), the name of the transportation company, and the name of the place of destination. Each of the waybills, conductors' manifests, memoranda, and bills of lading pertaining to such shipments by cars or boats shall have the words 'Southern Cattle' plainly written or stamped upon its face. Whenever such shipments are transferred to another transportation company or into other cars or boats, or are rebilled or reconsigned from any point not in the quarantined area to a point other than the original destination, the cars into which said cattle are transferred and the new waybills, conductors' manifests, memoranda, and bills of lading covering said shipments by cars or boats shall be marked as herein specified for cars carrying said cattle from the quarantined area, and for the billing, etc., covering the same. If for any reason the placards required by this regulation are removed from the cars or are destroyed or rendered illegible, they shall be immediately replaced by the transportation company or its agents, the intention being that legible placards designating the shipment as 'Southern Cattle' shall be maintained on the car from the time such shipments leave the quarantined area until they are unloaded at final destination and the cars are treated as hereinafter specified."

That notice of said order and regulation of said Secretary of Agriculture was published in accordance with law in The Daily Oklahoman, a newspaper duly and regularly published in Oklahoma City, Oklahoma, in its issue of March 24, 1909, and that notice of said order, made, issued and promulgated by the Secretary of Agricul-

ture as aforesaid, was served upon the defendant by service upon E. K. Voorhees, general freight agent, of said railroad company at St. Louis, Missouri, and a duly authorized agent of said company, and service thereof duly acknowledged on March 30, 1909; that said Hugo, Choctaw County, Oklahoma, is within the quarantined district, and within the territory established and declared by the said order regulation of the Secretary of Agriculture of the United States as territory within which there existed among the cattle a contagious and infectious disease known as splenetic, southern, or Texas fever.

6 And the grand jurors aforesaid, on their oaths aforesaid, do further present and charge that on or about the 16th day of August, A. D. 1913, the said St. Louis and San Francisco Railroad Company, common carrier as aforesaid, and William C. Nixon and William B. Biddle and Thomas H. West, receivers as aforesaid, did unlawfully, wilfully, and feloniously receive for transportation the said thirty-eight head of cattle consigned by H. L. Sanguin to the Clay-Robinson Live Stock Commission Company, and did then and there unlawfully, wilfully, and feloniously transport said shipment of cattle as aforesaid from Hugo, Choctaw County, Oklahoma, a point within that portion of the State of Oklahoma quarantined by order of the Secretary of Agriculture of the United States as aforesaid into Kansas City, Jackson County, Missouri, in the division and district aforesaid, the same being a point in an area and portion of the United States beyond and without the quarantined district theretofore established by the said Secretary of Agriculture as aforesaid beyond and outside of Choctaw County, Oklahoma; that the said defendants, the said St. Louis and San Francisco Railroad Company and said receivers as aforesaid received said cattle for transportation as aforesaid, and transported and delivered the same to the consignee at Kansas City, Missouri, as aforesaid, when the cars in which said cattle were transported by said defendants as aforesaid did not have securely affixed to both sides thereof durable placards of not less than five and one-half inches by eight inches in size, on which was printed with permanent black ink, in bold-face letters of not less than one and one-half inches in height, the words, "Southern Cattle," or any other informatiton concerning or pertaining to said shipment, as required by the statutes and regulations of the said Secretary of Agriculture, as hereinbefore set forth, and when the waybills, conductors' manifests and memoranda, and bills of lading pertaining to said shipment did not have the words "Southern Cattle"

7 plainly written or stamped upon their face, as required by the statutes, rules, and regulations made and promulgated by the Secretary of Agriculture as aforesaid, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

SAM O. HARGUS,
Assistant U. S. Attorney.

Ag. 639.

8 Said indictment is indorsed on the back as follows, to wit:

"No. 3215. United States District Court, Western Division of the Western District of Missouri. Witnesses: B. L. Stine, J. C. Leyser. The United States vs. St. Louis and San Francisco Railroad Company, and William C. Nixon, William B. Biddle, and Thomas H. West. Indictment for violation of sections 2 and 4, act of March 3, 1905 (33 Stat., 1264). A true bill. Geo. Law, foreman grand jury. Filed December 11th, 1913. John B. Warner, clerk. Francis M. Wilson, U. S. Attorney."

9 And afterwards, on the 19th day of December, 1913, the following entry appears of record, to wit:

UNITED STATES *vs.* ST. LOUIS & SAN FRANCISCO R. R. CO. ET AL.	3215.

This day come defendants and file motion to quash indictment herein.

Said motion to quash indictment, filed December 19th, 1913, is in words and figures as follows, to wit:

In the United States District Court for the Western Division of the Western District of Missouri.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY et al., defendants.	No. 3215.

Motion to quash indictment.

Now come defendants named in the indictment herein, appearing specially for the purpose of this motion, and for no other purpose whatever, and move to quash the indictment in this cause upon the following grounds:

1. The indictment does not charge any offense for which the receivers herein can be held.

10 2. The indictment does not charge any joint offense against the defendants named therein.

3. The persons named in the indictment as receivers of the St. Louis & San Francisco Railroad Company are not the receivers of said company.

Wherefore defendants pray that their motion be sustained.

COWHERD, INGRAHAM, DURHAM & MORSE,
Attorneys for Defendants appearing specially.

11 And afterwards, on the 22nd day of December, 1913, the following entry appears of record, to wit:

UNITED STATES *vs.* ST. LOUIS & SAN FRANCISCO R. R. CO. ET AL.	3215.

This day comes defendant, St. Louis & San Francisco R. R. Co., and files motion to quash summons and return also affidavit in support of said motion.

And afterwards, on the 31st day of January, 1914, the following entry appears of record, to wit:

UNITED STATES *vs.* ST. LOUIS & SAN FRANCISCO R. R. CO. ET AL.	3215.

This day comes the defendant, St. Louis & San Francisco R. R. Co., and withdraws its motion to quash the summons and return heretofore filed herein, and said St. Louis & San Francisco R. R. Co. also withdraws its motion to quash the indictment herein, and for plea says that it is not guilty as charged in the indictment herein: thereupon said motion to quash the indictment heretofore filed by Wm. C. Nixon, Wm. B. Biddle, and Thomas H. West was argued, submitted to the court, and by the court taken under advisement.

12 And afterwards, on the 14th day of February, 1914, the following entry appears of record, to wit:

UNITED STATES *vs.* ST. LOUIS & SAN FRANCISCO R. R. CO. ET AL.	3215.

The motion to quash the indictment heretofore submitted to the court and taken under advisement, now the court being fully advised in the premises in accordance with memorandum opinion this day filed it is ordered that said motion be sustained, and the defendants, Wm. C. Nixon, W. B. Biddle, and Thomas H. West, receivers of said St. Louis & San Francisco R. R. Co., are hereby ordered discharged, and to which ruling of the court the Government excepts.

13 And afterwards, to wit, on the 25th day of February, 1914, the following entry appears of record, to wit:

UNITED STATES *vs.* ST. LOUIS & SAN FRANCISCO R. R. CO. ET AL.	3215.

This day comes Francis M. Wilson, United States attorney, also comes St. Louis & San Francisco R. R. Co. by its attorneys, Cowherd, Ingraham, Durham & Morse, and by leave of court withdraws its plea of not guilty heretofore entered herein: thereupon said St. Louis & San Francisco R. R. Co. by leave of court files a demurrer to the indictment herein, which said demurrer is submitted to the court, and the court being fully advised in the premises, it is ordered that said demurrer be sustained.

14 Said separate demurrer of St. Louis & San Francisco Railroad Company, filed February 25th, 1914, is in words and figures as follows, to wit:

In the United States District Court for the Western Division of the Western District of Missouri.

THE UNITED STATES, COMPLAINANT,
vs.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL., defendants. } No. 3215.

Separate demurrer of St. Louis & San Francisco Railroad Company.

Now comes St. Louis & San Francisco Railroad Company and demurs to the indictment herein on the following grounds:

1. There is no joint offense charged in said indictment, for the reason that it appears from said indictment that this defendant and the other defendants therein named could not at one and the same time be guilty of the offense charged.

2. There is no offense charged against this defendant, since it appears from said indictment that the other defendants therein named were the duly appointed and qualified receivers of said St. Louis & San Francisco Railroad Company and as such receivers had charge of and were managing, conducting, and operating the property and business of said corporation.

Wherefore, this defendant asks that its demurrer be sustained.

COWHERD, INGRAHAM, DURHAM & MORSE,
Attorneys for said Defendant.

15 And afterwards, on the 28th day of February, 1914, the following entry appears of record, to wit:

UNITED STATES
vs.
ST. LOUIS & SAN FRANCISCO R. R. CO. ET AL. } 3215.

This day comes the United States of America by Francis M. Wilson, United States attorney, and files petition for writ of error, together with its assignments of errors, which petition is duly sustained and a writ of error duly allowed by the court to the United States Supreme Court.

Thereupon citation is duly issued and signed by the court admonishing the defendants to be and appear before the United States Supreme Court in the city of Washington, D. C., thirty days from and after the day the citation bears date, service of which said citation is by Cowherd, Ingraham, Durham & Morse, attorneys for said defendants, duly accepted and the same is filed.

16 Said petition for writ of error, filed February 28th, 1914, is in words and figures as follows, to wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

UNITED STATES OF AMERICA
vs.
WILLIAM C. NIXON, W. B. BIDDLE, AND THOMAS H. West, receivers of the St. Louis and San Francisco Railroad Company.

Petition for writ of error.

Comes now the above-named plaintiff, United States of America, by Francis M. Wilson, Esquire, its attorney for the Western District of Missouri, and complains that in the record and proceedings had in said cause, and also in the rendition of the decision and judgment in the above-entitled cause in said United States District Court for the Western Division of the Western District of Missouri, at the November term thereof, against said plaintiff on the 14th day of February, 1914, manifest error hath happened to the great damage of said plaintiff in the decision and judgment of said District Court in sustaining the motion to quash the indictment therein, which said decision and judgment is based upon the construction of the statute upon which said indictment is founded, to wit, sections 2 and 4 of the act of Congress approved March 3, 1905, chapter 1496, 33 United States Statutes at Large, 1264, entitled "An act to enable the Secretary of Agriculture to establish and maintain quarantine districts, to permit and regulate the movement of cattle and other live stock therefrom, and for other purposes."

Wherefore, this plaintiff prays for the allowance of a writ of error in said cause and for such other orders and process as may cause the errors here complained of to be corrected, and the judgment
17 and decision in said cause to be reversed by the Supreme Court of the United States of America.

FRANCIS M. WILSON,
United States Attorney for the Western District of Missouri, Attorney for Plaintiff.

KANSAS CITY, MISSOURI, *February 28, 1914.*

18 Said assignments of errors, filed February 28th, 1914, is in words and figures as follows, to wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

UNITED STATES OF AMERICA
vs.
WILLIAM C. NIXON, W. B. BIDDLE, AND THOMAS H. West, receivers of the St. Louis and San Francisco Railroad Company.

Assignment of errors.

Comes now the United States of America, plaintiff herein, by Francis M. Wilson, United States attorney for the Western District

of Missouri, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

First. That the court erred in sustaining the motion to quash, filed by the defendants herein to the indictment in said cause, and by holding and deciding that the indictment does not charge any offense under the provisions of sections 2 and 4 of the act approved March 3, 1905, chapter 1496, 33 United States Statutes at Large, 1264, for which the receivers can be held, and by entering a judgment discharging the defendants herein.

Second. That the court erred in its construction of said sections of said act approved March 3, 1905, by its decision and judgment in sustaining said motion to quash.

Third. That the court erred in sustaining, and not overruling, said motion to quash.

Fourth. That the court erred in deciding said motion to quash against the plaintiff and in favor of the defendants.

19 Wherefore, the United States of America prays that the decision and judgment of said District Court of the United States for the Western Division of the Western District of Missouri may be reversed, annuled, and held for naught, and that the said United States of America may be restored to all things which it has lost by occasion of said judgment.

FRANCIS M. WILSON,
United States Attorney for the Western District of Missouri, Counsel for Plaintiff.

KANSAS CITY, MISSOURI, *February 28, 1914.*

20 Said order allowing writ of error, filed February 28th, 1914, is in words and figures as follows, to wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

UNITED STATES OF AMERICA
vs.
WILLIAM C. NIXON, W. B. BIDDLE, AND THOMAS H. West, receivers of the St. Louis and San Francisco Railroad Company.

Order allowing writ of error.

Upon motion of Francis M. Wilson, Esquire, attorney for the Western District of Missouri, and attorney for the United States of America, plaintiff in error, and on filing petition for an order allowing writ of error, together with an assignment of errors:

It is ordered that a writ of error be allowed to the Supreme Court of the United States from the decision and judgment entered February 14, 1914, sustaining the motion to quash filed by the defendants herein to the indictment in the above-entitled cause, and that a cer-

tified transcript of the record and proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

ARBA S. VAN VALKENBURGH,
Judge United States District Court,
Western District of Missouri.

Dated KANSAS CITY, MISSOURI, *February 28, 1914.*

21 The memorandum upon motion to quash indictment, filed February 14th, 1914, is in words and figures as follows, to wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY and William C. Nixon, William B. Biddle, and Thomas H. West, receivers, defendants.	No. 3215.

Memorandum upon motion to quash indictment.

This is an indictment against the railroad company, and its receivers individually, for violation of the quarantine law in failing to placard cars and to stamp the words "Southern Cattle" upon waybills, conductors' manifests, memoranda, and bills of lading. The receivers move to quash the indictment on three grounds:

1. The indictment does not charge any offense for which the receivers herein can be held.

2. The indictment does not charge any joint offense against the defendants named herein.

3. The persons named in the indictment as receivers of the St. Louis & San Francisco Railroad Company are not the receivers of said company.

The third specification received no attention from counsel at the argument, and may be laid aside.

Respecting the second, it may be said that it seems to be unquestionable that the offense is not joint, because the relationship of the parties is such that both can not at the same time be guilty of the offense charged.

The first point was the one substantially submitted. It is
22 one which could best be submitted on demurrer; but, in the present state of the procedure, this is perhaps immaterial.

The case is brought under the second and fourth sections of the act of March 3rd, 1905, 10th Annotated Statutes, page 35, 33 Statutes at Large, 1264. Section 2 affects the railroad company alone, on the one hand, and any person, company, or corporation delivering to such railroad or endeavoring or causing to be driven on foot or transporting or causing to be transported in private conveyance, on the other. In United States vs. Harris, 177 U. S., 305, the Supreme

Court held that the 28-hour law of March 3, 1873, which was couched in substantially similar terms as to the carrier to be charged, did not include a receiver of a railroad within the letter or the spirit of its provisions. Congress subsequently amended this act so as to include receivers. (Supplement 1909 Federal Statutes Annotated, page 44.) United States vs. Harris was decided April 9, 1900. The quarantine statute under which this prosecution is brought was enacted March 3, 1905, and omitted receivers of railroads from its enumeration of parties who might be charged with its violation. The court can not presume that this was inadvertent; but, if it was, the construction must fall within the rule announced in United States vs. Harris; and there is far greater reason for so holding in the instant case, because the 28-hour law permits the recovery of a penalty in a civil proceeding only. The quarantine law is highly penal, providing for a fine of not less than one hundred nor more than one thousand dollars, or imprisonment for not less than one month nor more than one year, or by both such fine and imprisonment. This statute, therefore, requires greater strictness of construction. Moreover, the railroad corporation could, of course, be punished only by a fine. The act does not include its officers or agents; but here the receivers are indicted personally and might be subjected to imprisonment as well as fine; and if chargeable at all, it must be because they stand in the shoes of the railroad company and are held be-
23 cause of the acts or omissions of employees in charge of the forbidden transportation. As to receivers, then, severity beyond the letter and spirit of the law is at once apparent, if that law be construed to include receivers.

My attention has been called to department letter of November 29th, 1913, wherein it is stated that United States vs. Harris et al. is thought not to apply because the fourth section "makes it unlawful for anyone to transport cattle from a quarantine district into a State or Territory, and makes it a misdemeanor for any person to violate the provisions of said section 4." But section four is a part of the same act, and the various sections must be construed together. Section 2 undertakes to make specific enumeration of all parties who may be charged with the violation of this act. Section 4 therefore relates back to section 2 and must be held to refer to the same persons and corporations in the same relationship, as more specifically described in section 2. I am of opinion, therefore, that the motion to quash should be sustained, and it is so ordered.

While the motion is filed in the name of all the defendants, nevertheless appearance was made on behalf of the receivers, and the first specification upon which this ruling is based relates only to them. However, it has been indicated to the court that either motion or demurrer would be filed on behalf of the defendant railroad company, and I have been asked in the interest of expedition to express my views as to the liability of the St. Louis & San Francisco Railroad Company under this indictment. It is charged, and the court takes

judicial notice of the fact because ancillary proceedings have been docketed here, that the company is in the hands of receivers who controlled and operated it upon the date of the alleged violation; this being so, the railroad corporation, as a distinct entity, has no such control over the operation of its railroad as could make it liable
for this offense. (Memphis & C. R. Co. et al. vs. Hoechner
24 (C. C. A.), Sixth Circuit, 67 Fed., 456.) It would be unjust that the stockholders of the railroad company should be punished indirectly for acts over which neither they nor their officers or directors had any control.

If it be said that this leaves the act charged without a remedy provided, the answer is that this is a statutory offense and exists only as defined by law. If Congress sees fit to do so it may include receivers, as it did subsequently in the case of the 28-hour law. It may be, however, that it deems the penalty here provided inapplicable to receivers who are acting under the supervision of the court, and who may be presumed to discharge their duties in good faith and with the utmost practicable precaution. In any event, the court can not so legislate as to include within the prohibition of the statute parties whom Congress in its wisdom has seen fit to exclude.

ARBA S. VAN VALKENBURGH, *Judge.*

25 UNITED STATES OF AMERICA, *sct:*

I, John B. Warner, clerk of the United States District Court for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true, and complete copy of the record, assignments of errors, and all proceedings in the case of the United States of America vs. St. Louis and San Francisco Railroad Company, William C. Nixon, William B. Biddle, and Thomas H. West, defendants, No. 3215; and I further certify that the original citation and writ of error are prefixed hereto and returned herewith.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Kansas City, in said district, this 24th day of March, A. D. 1914.

[SEAL.]

JOHN B. HARNER,
Clerk U. S. District Court.
By ELIZABETH LINTON,
Deputy Clerk.

(Indorsement on cover:) File No. 24141. W. Missouri D. C. U. S. Term No., 990. The United States, plaintiff in error, vs. William C. Nixon, W. B. Biddle, and Thomas H. West, receivers of the St. Louis & San Francisco Railroad Company. Filed March 31st, 1914. File No. 24141.

No. [redacted]-497

In the Supreme Court of the United States

October Term, 1940

[redacted]

Petitioner,

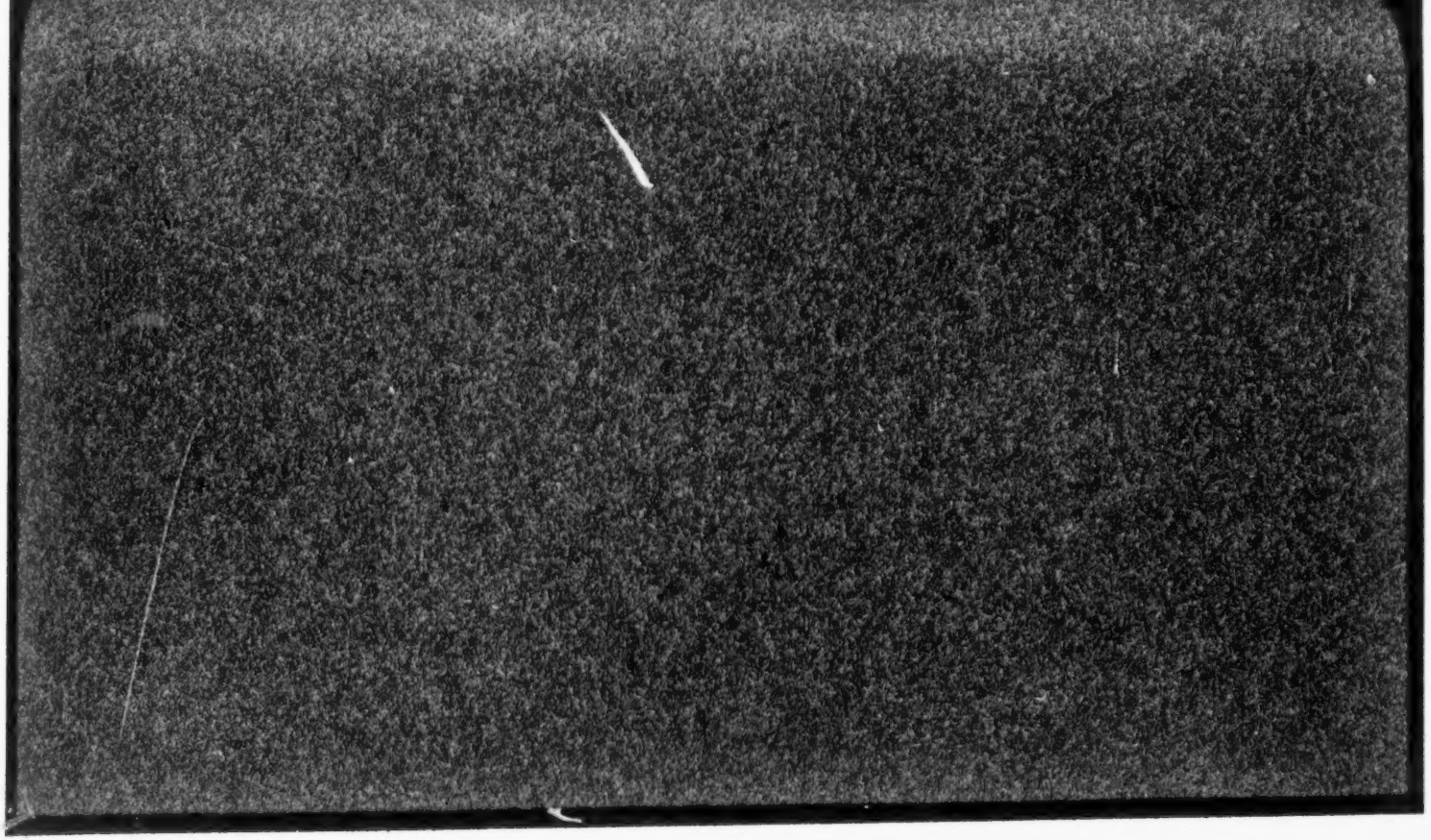
vs.

[redacted]

Respondents.

[redacted]

[redacted]



In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
WILLIAM C. NIXON, W. B. BIDDLE, AND Thomas H. West, receivers of the St. Louis and San Francisco Railroad Company. } No. 990.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and, in accordance with the provisions of the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, moves the court to advance this cause for hearing at an early day convenient to the court during the next term.

The defendants were indicted for a violation of sections 2 and 4 of the so-called "Quarantine Act" of March 3, 1905, 33 Stat. 1264, 1265, for failure to placard cars and to stamp the words "Southern Cattle" upon waybills, conductors' manifests, memoranda, and bills of lading, as required by regulations

promulgated by the Secretary of Agriculture in accordance with section 3 of said "Quarantine Act."

The lower court sustained a motion to quash the indictment, holding that the act did not include receivers of railroad companies.

Not only is the question one of grave importance to the quarantine system of the Department of Agriculture but the decision herein will control a number of similar cases now pending.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.

MAY, 1914.

○

No. 427

In the Supreme Court of the United States

OCTOBER TERM, 1914

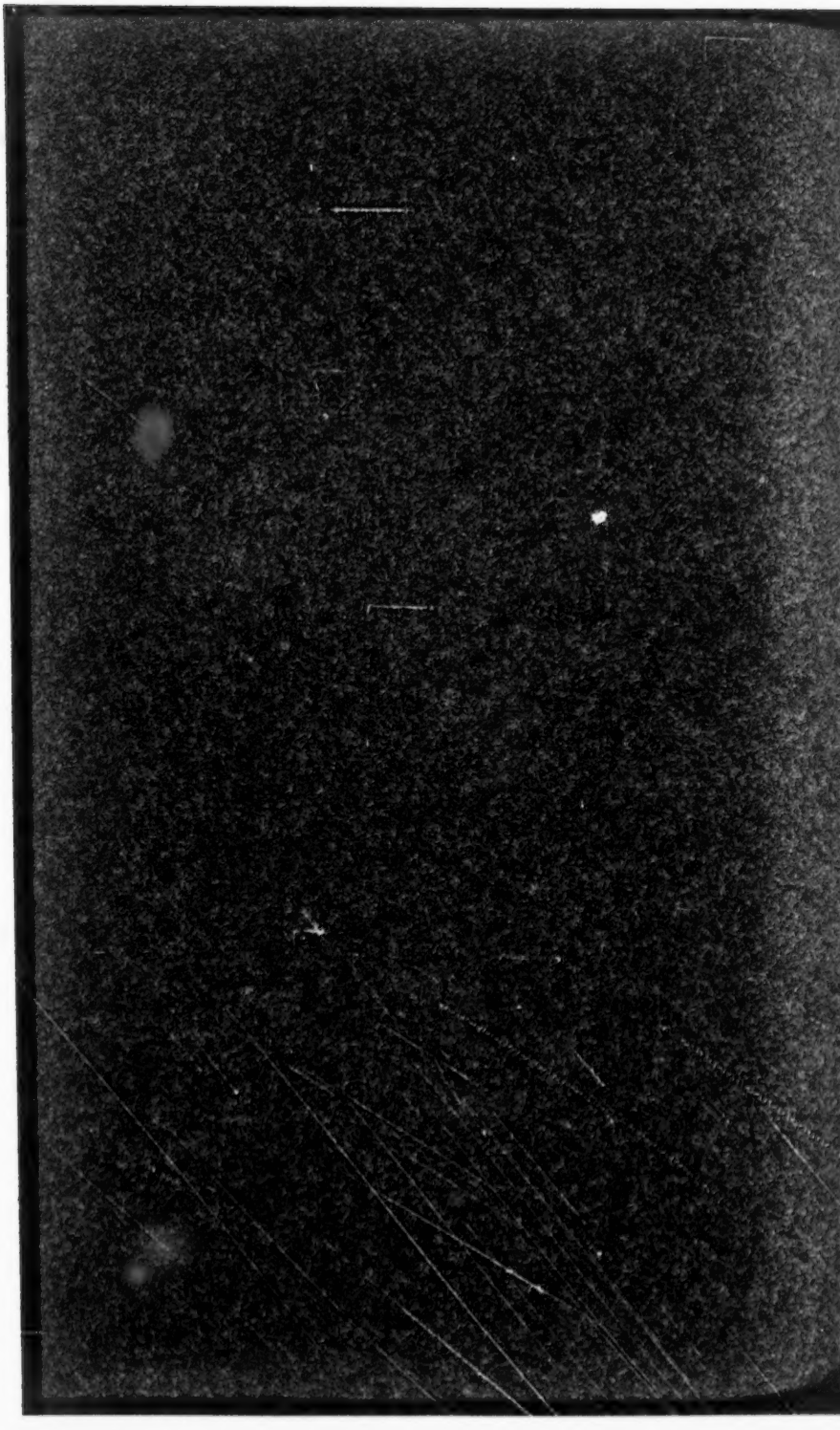
THE UNITED STATES, PLAINTIFF IN ERROR,

v.

WILLIAM C. NIXON, W. D. BIDDLE, AND THOMAS H. WHITE, COPARTNERS AS THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

BRIEF FOR THE UNITED STATES.



In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN error. *v.* WILLIAM C. NIXON, W. B. BIDDLE, and Thomas H. West, receivers of the St. Louis and San Francisco Railroad Company.	No. 427.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

W. C. Nixon, W. B. Biddle, and T. H. West, receivers of the St. Louis and San Francisco Railroad Company, hereinafter called defendants, together with said railroad company, were indicted in the District Court of the United States for the Western District of Missouri, for an alleged violation of the Quarantine Act of March 3, 1905, ch. 1496, 33 Stat., p. 1264.

Defendants moved to quash the indictment. No evidence was adduced and the hearing was upon the pleadings. The motion was sustained and the Government thereupon brought this writ of error in

accordance with the Criminal Appeals Act of March 2, 1907, ch. 2564, 34 Stat., p. 1246.

The railroad company is not a party to this record, having withdrawn its motion to quash.

STATEMENT OF FACTS.

The indictment charges, omitting formal and immaterial parts, that defendants were receivers of the railroad company and as such "had charge of and were managing, conducting, and operating the property and business of said corporation as a common carrier;" that the Secretary of Agriculture had quarantined a portion of the State of Oklahoma, and had given notice of such quarantine and of the regulations relating thereto; that on or about August 16, 1913, the "said St. Louis and San Francisco Railroad Company, a common carrier as aforesaid, and William C. Nixon and William B. Biddle and Thomas H. West, receivers as aforesaid, did unlawfully, willfully, and feloniously transport said shipment of cattle" from a point within the quarantined section of Oklahoma to Kansas City, Missouri, without placarding the cars as required by the "statutes and regulations of the said Secretary of Agriculture."

The pertinent parts of the Quarantine Act and amendment are as follows:

> SEC. 2. That no railroad company or the owners or masters of any steam or sailing or other vessel or boat shall receive for transportation or transport from any quarantined State * * * into any other State * * *

any cattle or other live stock, except as hereinafter provided.

SEC. 4. That cattle or other live stock may be moved from a quarantined State * * * into any other State * * * under and in compliance with the rules and regulations of the Secretary of Agriculture, made and promulgated in pursuance of the provisions of section three of this act; but it shall be unlawful to move, or allow to be moved, any cattle or other live stock from any quarantined State * * * into any other State * * * in manner or method or under conditions other than those prescribed by the Secretary of Agriculture.

SEC. 6. That any person, company, or corporation violating the provisions of sections two or four of this act shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not more than one year, or by both such fine and imprisonment. (Act of March 3, 1905, ch. 1496, 33 Stat., pp. 1264, 1265.)

AMENDMENT.

That hereafter all the provisions of the said act approved March third, nineteen hundred and five, shall apply to any railroad company or other common carrier whose road or line forms any part of a route over which cattle or other live stock are transported in the course of shipment from any quarantined State * * * into any other State * * *. (Amendment of March 4, 1913, ch. 145, 37 Stat., pp. 828, 831.)

SPECIFICATION OF ERROR.

The assignments of error appear on page eleven of the record. In substance all charge that the court erred in quashing the indictment and in so construing the Quarantine Act as to exclude from its operation receivers of railroad companies.

ARGUMENT.

Defendants are receivers of a railroad company, upon the lines of which the alleged unlawful movement of cattle from a quarantined section took place. The District Court, in construing the statute under consideration, held that same did not apply to receivers of railroads and quashed the indictment.

This court has jurisdiction only to review the construction placed upon the Act by the lower court (*United States* v. *Stevenson*, 215 U. S. 190, *United States* v. *Keitel*, 211 U. S. 370), and must accept its interpretation of the indictment (*United States* v. *Patten*, 226 U. S. 525, 535).

The sole question involved in this case, therefore, is whether the provisions of the statute are applicable to receivers operating a railroad.

I.

Section 2 of the Act, as Amended, Construed.

By the amendment of 1913, supra, all of the provisions of the Quarantine Act were extended "to any railroad company or other common carrier."

Section 2 of the original act, with the italicized amending words added, would read:

> That no railroad company *or other common carrier* * * * shall receive for transportation or transport from any quarantined State * * * into any other State * * * any cattle or other live stock, except as hereinafter provided.

The words "railroad company" would not include receivers of a railroad, under the ruling in the case of *United States* v. *Harris*, 177 U. S. 305, but the words "or other common carrier," added by the amendment, are sufficiently broad to include such receivers.

In the usual and ordinary acceptation of the term, as defined by the courts and understood by the public, "a common carrier is one who undertakes for hire to transport the goods of those who may choose to employ him from place to place." (*Propeller Niagara* v. *Cordes et al.*, 21 How. 7, 22.)

Where the question has arisen, the authorities have treated receivers of railroads as common carriers.

> The trial court and also the Circuit Court of Appeals were of opinion that the third section of the judiciary act of March 3, 1887, c. 373, section 2, 24 Stat. 552, 554, authorizing suits to be brought against receivers of railroads, without special leave of the court by which they were appointed, was intended to place receivers upon the same plane with railroad companies, both as respects their liability to be sued for acts done while operating a railroad and as respects

> the mode of service. We concur in that view. (*Eddy* v. *Lafayette*, 163 U. S. 456, 464.)
>
> So it has been repeatedly held that in the operation and management of railroads by receivers in chancery they sustain to persons dealing with them the character of common carriers. (Alderson on Receivers, section 298.)
>
> So where the railroad has passed out of the control of the company and has come under the custody and management of some official representative, as a receiver, or a trustee for bondholders, who operates and controls it, such receiver or trustee is liable as a common carrier. (Hutchinson on Carriers (1906), section 77.)

To the same effect are, among many others, the following authorities:

> High on Receivers (Fourth Edition), section 398.
>
> Beach on Receivers (Second Edition), section 382.
>
> *McNulta* v. *Lochridge*, 141 U. S. 327, 331.
>
> *Erb* v. *Morasch*, 177 U. S. 584.
>
> *Texas & Pacific Ry. Co.* v. *Cox*, 145 U. S. 593, 601.
>
> *Beers* v. *Wabash, St. Louis & P. Ry. Co.*, 34 Fed. 244, 247.

Congress has recognized receivers as common carriers in sections 65 and 66 of the Judicial Code.

The Interstate Commerce Commission has repeatedly held that "receivers of railroad companies are common carriers subject to the prohibitions and requirements of, and to regulation under, the provisions of the Act to Regulate Commerce." (*Evans* v.

The Union Pacific Ry. Co. et al., 6 I. C. C. Rep. 520, 527.)

In construing the Hours of Service Act (March 4, 1907, ch. 2939, 34 Stat. 1416), making it "unlawful for any common carrier, its officers or agents," to require of its employees more than the permitted number of hours of service, the Circuit Court of Appeals for the Eighth Circuit say:

> From a consideration of the foregoing authorities, it seems to us clear that the term "common carrier" had a well-defined meaning, and that the receiver of a railroad came within the designation "common carrier;" that Congress, in using the term "common carrier," used it in the sense in which such words are generally meant and understood; that the object and purpose of the statute would be entirely defeated in all cases in which a railroad or other common carrier is operated by a receiver, if the words "common carrier" should be given a more restricted meaning than generally understood. (*United States* v. *Ramsey*, 197 Fed. 144, 148.)

If given its usual legal meaning, therefore, the term "common carrier" includes receivers. There is nothing in the act to indicate that Congress used the term in any other sense, but much, in its purpose and expressions, to evidence the intention to make it "unlawful to move, or allow to be moved, any cattle" (section 4 of the act) from a quarantined section into another State by any person or corporation whatsoever. To narrow the ordinary meaning of the words by construction, would thwart the pur-

poses of the Act and would be done without necessity or justification.

> Statutes in derogation of the common law and penal statutes are not to be construed so strictly as to defeat the obvious intention of Congress as found in the language actually used according to its true and obvious meaning. (Syllabus, *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1.)

The court, in the Johnson case (p. 18), quote with approval the following from the opinion of Mr. Justice Story in the case of *United States* v. *Winn*, 3 Sumn. 209, 211:

> But where the words are general, and include various classes of persons, I know of no authority, which would justify the court in restricting them to one class, or in giving them the narrowest interpretation, where the mischief to be redressed by the statute is equally applicable to all of them.

When the mischief to be redressed by this statute is considered, it is apparent that the remedy, to be effective, must apply to all carriers, whether they be operated by their own officers or by receivers.

> There is a presumption against a construction which would render a statute ineffective or inefficient, or which would cause grave public injury or even inconvenience. (Syllabus, *Bird* v. *United States*, 187 U. S. 118.)
>
> Another guide to the meaning of a statute is found in the evil which it is designed to remedy. (*Church of the Holy Trinity* v. *United States*, 143 U. S. 457, 463.)

This is a health measure, one to protect the public from diseased meat and to prevent the spreading of

contagious diseases among cattle. The violation of the Act by receivers of a railroad is just as dangerous to the public as violation by the officers of a railroad company. There have been times when two-thirds of the railroads were in the hands of receivers, and usually a large nunber are being so operated. If receivers are not within the Act, their conduct not only may conduce to the spreading of such diseases within the sphere of their operations, but also may render nugatory the restrictions upon other common carriers. It would be of little benefit to the public to forbid a railroad company from transporting cattle from an infected district while at the same time the receivers of a parallel road are permitted freely to move cattle from such section.

This court has said, in the very case upon which defendants rely, that:

> It may be conceded that it was the intention of Congress to subject receivers of railroad companies, appointed such by courts of the United States, to the valid laws and regulations of the States and of the United States, whose object is to promote the safety, comfort, and convenience of the traveling public. (*United States* v. *Harris*, 177 U. S. 305, 308.)

Unless, therefore, there are words in the Act imperatively demanding such construction, it should not be so construed as to exclude receivers from its operation. There is no such necessity, but, on the other hand, as amended, its language demands a construction which will carry out the conceded intention of Congress.

II.

Sections 4 and 6 of the Act Construed.

The Quarantine Act is merely a development of the statute establishing the Bureau of Animal Industry, approved May 29, 1884, ch. 60, 23 Stat. 31.

Section 7 of the older Act provides that—

> any person or persons operating any such railroad, or master or owner of any boat or vessel, or owner or custodian of or person having control over such cattle or other live stock within such infected district, who shall knowingly violate the provisions of section six of this Act, shall be guilty of a misdemeanor.

Undoubtedly this provision is broad enough and was intended to cover receivers of railroads. The corresponding section (4) of the Quarantine Act expresses the same intention in as broad but somewhat different language, to wit:

> It shall be unlawful to move, or allow to be moved, any cattle or other live stock from any quarantined State.

This prohibition is universal, and, construed with section 6 of the same Act, which imposes a penalty upon "any person, company, or corporation violating the provisions of sections two or four of this Act," manifestly is intended to apply to receivers or any other "person or persons operating any such railroad."

The argument and authorities hereinbefore set out in the discussion of section 2 of the Act as amended are equally applicable under this head and need not be repeated.

III.

The Penalty to be Imposed.

The trial court laid stress upon the alleged inappropriateness of the provision which authorizes imprisonment, as well as fine, for violation of the Act, as an indication that receivers were not intended to be included therein. The objection is not well taken. While the proceeding is nominally against the receivers, it is in fact against the receivership.

> Actions against the receiver are in law actions against the receivership, or the funds in the hands of the receiver, and his contracts, misfeasances, negligences, and liabilities are official and not personal, and judgments against him as receiver are payable only from the funds in his hands. (*McNulta* v. *Lochridge*, 141 U. S. 327, 332.)
>
> A receiver "with respect to the question of liability stands in place of the corporation. His position is somewhat analogous to that of a corporation sole." (Id. 331.)

The receivers of a railroad personify the receivership, and are an independent carrier (*Express Co.* v. *Railroad Co.*, 99 U. S. 191), just as the Adams Express Company, a "simple partnership," was held to personify the partnership, to fall within the term "common carrier," and to be liable to fine only, although the act under consideration provided for imprisonment and fine. (*Adams Express Co.* v. *United States*, 229 U. S. 381, 389.)

In this case a fine alone would be imposed, which would be against the receivers in their official capac-

ity and payable out of receivership funds, just as in the case of criminal prosecutions of corporations, where, although both fine and imprisonment are authorized, only a fine can be imposed.

> Where corporations are as much within the mischief aimed at by a penal statute and as capable of willful breaches of the law as individuals the statute will not, if it can be reasonably interpreted as including corporations, be interpreted as excluding them.
>
> Where a penal statute prescribes two independent penalties, it will be construed as meaning to inflict them so far as possible and, if one is impossible, the guilty defendant is not to escape the other which is possible. (Syllabi, *United States* v. *Union Supply Company*, 215 U. S. 50.)

The difficulty anticipated by the trial court is not present in this case, and its supposed hardships, therefore, have no bearing upon the true interpretation of this Act.

CONCLUSION.

The construction given to the Act by the court below is too narrow. The judgment quashing the indictment should be reversed and the Act so construed as to prohibit the violation of its provisions by receivers as well as by other persons operating railroads.

E. MARVIN UNDERWOOD,
Assistant Attorney General.

SEPTEMBER, 1914.

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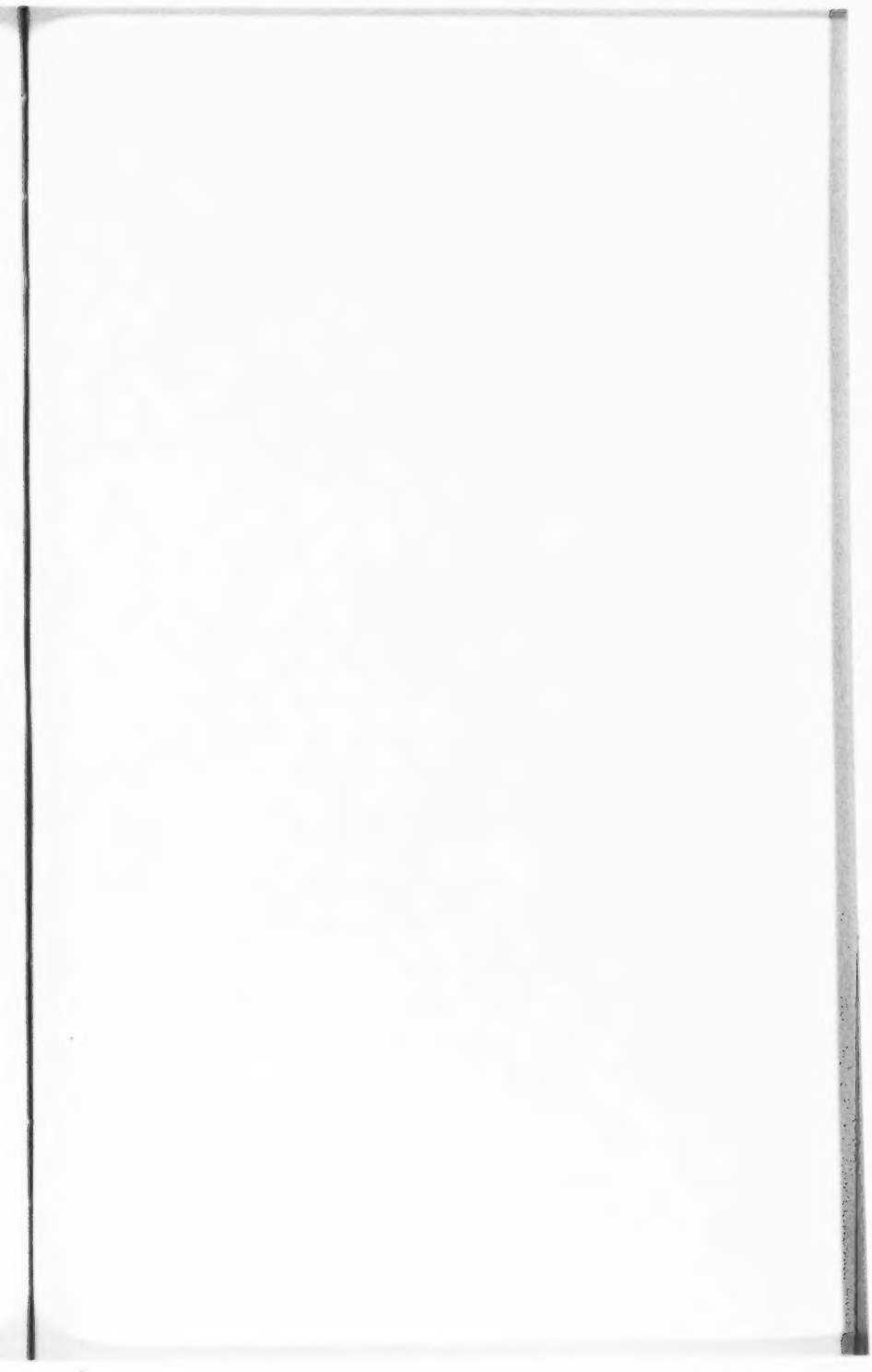

No. 427.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,

VS.

WM. C. NIXON, W. B. BIDDLE AND THOS. H. WEST, RECEIVERS OF THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, DEFENDANTS IN ERROR.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR DEFENDANTS IN ERROR.

W. F. EVANS,
W. S. COWHERD,
Attorneys for Defendants in Error.

No. 427.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,

VS.

WM. C. NIXON, W. B. BIDDLE AND THOS. H. WEST, RECEIVERS OF THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, DEFENDANTS IN ERROR.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT.

This is an indictment against W. C. Nixon, W. B. Biddle and T. H. West, Receivers of the St. Louis & San Francisco Railroad Company, and the St. Louis & San Francisco Railroad Company, for alleged violation of the Quarantine Act of March 3, 1905, Ch. 1496, 33 Stat. 1264.

The defendants filed a motion to quash the indictment setting up the following grounds:

1. The indictment does not charge any offense for which the Receivers herein can be held.

2. The indictment does not charge any joint offense against the defendants named herein.

3. The persons named in the indictment as the Receivers of the St. Louis & San Francisco Railroad Company are not the Receivers of said Company.

The Railroad Company afterwards withdrew its motion, but as far as appears from the record it still is a party to the indictment.

The District Court sustained the motion to quash, as to the Receivers, on the first two grounds, that no offense was charged for which the Receivers could be held, and that there was no joint offense against the defendants named.

The only act passed on by the District Court was the Act of March 3, 1905. The so-called Amendment of March 4, 1913, was not presented to the court and the question of its applicability was raised for the first time in the brief of the Attorney General.

ARGUMENT.

I.

The only question before this Court is the construction of the Quarantine Act of March 3, 1905, unaffected by the so-called Amendment of March 4, 1913.

The indictment in this case is based on the Act of March 3, 1905, and contains a reference to it, both in the body of the indictment and in the endorsement (Record, pages 5 and 7). The specifications of error charge that the court erred in its construction of Sections 2 and 4 of the Act of March 3, 1905 (pages 10 and 11). There is no reference in the record to any other statute. As appears from the memorandum opinion (pages 12 to 14 of the Record), the court held, under authority of *U. S.* v. *Harris*, 177 U. S. 305, that the Act of March 3, 1905, did not apply to receivers.

The so-called Amendment is to be found in the Act of March 4, 1913, Ch. 145, being "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1914." 37 Stat. 831.

The jurisdiction of this court under the Criminal Appeals Act is limited to a review of the act construed by the lower court, and as this second act was not construed by the lower court, the only question for review now open is whether the District Court was right in its construction of the Act of March 3, 1905.

This question was discussed in *U. S.* v. *George*, 228 U. S. 14. In considering the Criminal Appeals Act, the court says (page 18):

> "That Act allows a direct appeal to this court 'from a decision or judgment * * * sustaining a demurrer to any indictment * * * where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment is founded.' Act of March 2, 1907, c 2564, 34 Stat. 1246.
>
> This statute seems to require an explicit declaration of the law upon which an indictment is based, and a ruling on its validity or construction. To contend for one law as applicable in the trial court and another in the appellate court would seem not only to be opposed to the requirement of the statute, but to be inconsistent with orderly procedure, and to confound the relation of trial and appellate tribunals."

If the only statute to be construed is the Act of March 3, 1905, it will be conceded that the trial court was right. The point made by the Attorney General that Sections 4 and 6 of the Act enlarged its scope is not well taken.

Section 2 of the Act defines the persons who may be included within it. Sections 4 and 6 make no attempt to do so. The whole act must be construed together, and obviously Section 4 and 6, which deal with other matters, refer back to Section 2 for determination of what persons are included. To hold that Section 4 creates a larger class of persons than those named in Section 2, would be to give the Act a strained and artificial construction.

II.

Even the Act of March 4, 1913, should not be construed to apply to Receivers.

The Quarantine Act is highly penal. It provides for both fine and imprisonment. Procedure under it is by indictment.

In the cases referred to by the Attorney General, the acts construed were acts similar to the Hours of Service Act, in which the procedure is by civil action to recover a penalty.

If Congress had intended to include receivers in the word railroad company, or the word common-carrier, it would doubtless have named them.

This court has held in the case of *U. S.* v. *Baltimore & Ohio Southwestern R. R. Co.*, that the Quarantine Act should not be extended to connecting carriers, and should receive a strict construction. Under a strict construction of the act, receivers are not included in the term common-carrier.

III.

The indictment in this case was properly quashed without resorting to a construction of the Quarantine Act.

The indictment attempted to charge a joint offense on the part of the Receivers and the Railroad Company. At the same time it stated that the Receivers were managing, conducting and operating the property. Tht Disrict Court held that there was an attempt to charge a joint offense, but the relations of the parties were such that both could not at the same time be guilty of the offense charged. In other words, that the Railroad Company and the Receivers could not at the same time be operating a railroad.

The construction placed upon the indictment by the District Court is binding upon this court. *U. S.* v. *Patten*, 226, U. S. 525.

As the motion to quash the indictment was properly sustained, without involving a construction of the Quarantine Act, there is no need for this court to review the action of the District Court on the latter point.

The ruling of the District Court in sustaining the motion to quash the indictment should be affirmed.

Respectfully submitted,

W. F. EVANS,
W. S. COWHERD,
Attorneys for Defendants in Error.

UNITED STATES *v.* NIXON, BIDDLE, AND WEST, RECEIVERS OF THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

No. 427. Argued October 22, 1914.—Decided November 30, 1914.

A receiver of a corporation is not a corporation and not within the terms of the penal statute regulating corporations involved in this action. *United States* v. *Harris*, 177 U. S. 305.

In so far as a receiver of a railroad company transports passengers and property he is a common carrier with rights and responsibilities as such, and while operating a railroad he is subject to the penal provisions of a statute regulating the actions of common carriers in regard to transportation.

Prior to the amendment of March 4, 1913, extending the Quarantine Act of March 3, 1905, c. 1496, 33 Stat. 1264, prohibiting the transportation of cattle from a quarantined State to any other State, so as to make it apply to any common carrier, §§ 2 and 4 of that act did not apply to receivers of railroad companies.

Entries in the caption and on the back of the indictment are convenient means of reference, and in cases of doubt might be of assistance in determining what statute has been violated, *Williams* v. *United States*, 168 U. S. 382, but they form no part of the indictment itself.

The statute on which the indictment is founded must be determined as matter of law from the facts therein charged; and the facts as pleaded may bring the offense charged within an existing statute although the same is not mentioned in the indictment and another statute is referred to in the entries on the back and in the caption.

Under the Criminal Appeals Act of 1913, the statute on which as matter of law the indictment is based may be misconstrued not only by misinterpretation but by failing to apply its provisions to an indictment which sets out facts constituting a violation of its terms.

An indictment must set out the facts and not the law.

The right of the Government to an appeal under the Criminal Appeals Act of 1907 cannot be defeated by entering a general order of dismissal without referring to the statute involved or giving the reasons on which the decision was based.

An error on the part of the trial judge dismissing the indictment in construing the statute in its original form as not including the offense charged, cannot be cured, nor can his decision be sustained, because the amendment by which the statute was made to include the offense had not been called to his attention.

THE facts, which involve the jurisdiction of this court under the Criminal Appeals Act of 1907 and the construction of the Cattle Quarantine Act of 1905 and its application to receivers of common carriers under the Amendment of 1913, are stated in the opinion.

Mr. Assistant Attorney General Underwood for the United States.

Mr. W. F. Evans and *Mr. W. S. Cowherd* for defendants in error, submitted.

MR. JUSTICE LAMAR delivered the opinion of the court.

The Grand Jury for the Western Division of the Western District of Missouri returned an indictment against the St. Louis & San Francisco Railroad Company and its Receivers, charging that on August 16, 1913, Nixon, Biddle and West, as Receivers of said Company, were operating the property and business of said corporation as a common carrier of freight, and unlawfully transported cattle from a quarantine district in Oklahoma to Kansas City, Missouri, without compliance with the rules and regulations established by the Secretary of Agriculture.

Both the indorsement and caption to this indictment described it as being for "violation of secs. 2 and 4 of the act of March 3, 1905, 33 Stat. 1264." Those sections of that act provide that "no railroad company . . . shall transport from any quarantine State . . . to any other State any cattle . . ." except "in com-

pliance with regulations promulgated by the Secretary of Agriculture."

The defendants demurred on the ground "that the indictment does not charge any offense for which Receivers herein can be held." The court treated the indictment as founded on the act of 1905 imposing a penalty upon railroad companies and after argument sustained the demurrer—filing a memorandum in which he held that, under the ruling in *United States* v. *Harris*, 177 U. S. 305, the statute did not create an offense for which Receivers could be punished.

The case is here under the Criminal Appeals Act (34 Stat., 1246) on a writ of error in which the Government excepts generally to the quashing of the indictment and specially to the court's construction of this act of 1905.

In view of the decision in *United States* v. *Harris*, the judgment of the court below would necessarily have to be affirmed if the case was to be determined solely by the provisions of the Quarantine Act of 1905, which imposes a penalty for the transportation of cattle by a railroad company. But a Receiver is not a corporation, and, therefore, not within the terms of a statute applicable to railroad companies, even though cattle from an infected district transported by him would be as likely to transmit disease as if they had been shipped over the same line while it was being operated by the company itself. And, no doubt in recognition of this fact, and in order to make the remedy as broad as the evil sought to be cured, Congress, by the act of March 4, 1913, c. 145, 37 Stat. 828, 831, made all of the provisions of the original quarantine act of 1905 "*apply to any railroad company or other common carrier, whose road or line forms any part of a route over which cattle or other live stock are transported in the course of shipment*" *from a quarantine State to any other State.*

The statute, as thus amended, applied to transportation of live stock over short lines belonging to private individ-

uals or to lumber companies hauling freight for hire; to roads operated by Trustees under power contained in a mortgage; and also to the more common case where a railroad was being operated by a Receiver acting under judicial appointment. For in so far as he transports passengers and property he is a common carrier with rights and civil responsibility as such (*Eddy* v. *Lafayette*, 163 U. S. 456, 464; Hutchison on Carriers, § 77). And there is no reason suggested why a Receiver, operating a railroad, should not also be subject to the penal provisions of a statute prohibiting any common carrier from transporting live stock by rail from a quarantine district into another State. *Erb* v. *Morasch*, 177 U. S. 584; *United States* v. *Ramsey*, 197 Fed. Rep. 144.

But it is said that the Amendment, buried in the Agricultural Appropriation Act of 1913, was unknown to the Grand Jury when the indictment was found and was not construed in deciding the motion to quash. And it is contended that, inasmuch as the Criminal Appeals Act only authorizes a review of a decision in so far as it was "based upon the . . . construction of the statute upon which the indictment is founded" (March 2, 1907, c. 2564, 34 Stat. 1246),—the correct ruling that Receivers are not within the act of 1905 ought not to be reversed because it now appears that they are within the terms of the act of 1913 which was not brought to the attention of the District Judge and was not therefore construed by him in fact. It is pointed out that while there is a general assignment that the court erred in quashing the indictment, yet the Government itself specifically complains of the court's construction of the act of 1905—not the act of 1913. And to emphasize the fact that the indictment was not founded on the Amendment, attention is called to the fact that entries on the back and in the caption of the indictment describe it as being for "violation of Secs. 2 and 4 of the Act of March 3, 1905, 33 Stat.

1264," which apply to railroad companies and not to Receivers.

These entries are useful and convenient means of reference and in case of doubt might possibly be of some assistance in determining what statute was alleged to have been violated. But these entries form no part of the indictment (*Williams* v. *United States*, 168 U. S. 382, 389) and neither add to nor take from the legal effect of the charge that the Receivers, while operating the business of the corporation as a common carrier, transported cattle "contrary to the form of the statute in such cases made and provided." What was that statute and on what statute the indictment was founded was to be determined as a matter of law from the facts therein charged.

There is no claim that it was quashed because of any defect in matter of pleading, and that being true, the ruling on the demurrer that "the indictment does not charge any offense for which the Receivers can be held," necessarily involved a decision of the question as to whether there was any statute which punished the acts therein set out. In determining that question it was necessary that the indictment should be referred, not merely to the Act mentioned in argument, but to any statute which prohibited the transportation of cattle by the persons, in the manner, and on the date charged in that indictment. For the reasons already pointed out it was a misconstruction of the Act of 1913, to which the indictment was thus legally referred, to hold that Receivers acting as common carriers were not within its terms.

Nor can a reversal be avoided by the claim that the act of 1913, though applicable to the facts charged in the indictment, had not been construed by the court. For within the meaning of the Criminal Appeals Act (34 Stat. 1246) the statute on which, as matter of law, an indictment is founded, may be misconstrued not only by misinter-

preting its language, but by overlooking its existence and failing to apply its provisions to an indictment which sets out facts constituting a violation of its terms. It is "a solecism to say that the decision that the acts charged are not within the statute is not based upon a construction of it." *United States* v. *Patten*, 226 U. S. 525, 535. It would, of course, be fairer to the trial judge to call his attention to the existence of the act on which the indictment was based (*United States* v. *George*, 228 U. S. 14, 18). Yet an indictment must set out facts and not the law; and when he sustained the demurrer on the ground that the shipment therein stated did not constitute a crime of which the Receivers could be convicted, he in legal effect held that they were not liable to prosecution if while operating a road as common carrier they hauled live stock from a quarantine State to another. In rendering that decision he made a ruling of the very kind which the United States was entitled to have reviewed under the provisions of the Criminal Appeals Act (34 Stat. 1246). If that were not so the right of the Government could in any case be defeated by entering a general order of dismissal, without referring to the statute which was involved or without giving the reasons on which the decision was based.

The error can no more be cured by the fact that the existence of the statute was not called to the attention of the court than the Receivers, on the trial before the jury, could excuse themselves by proof that they did not know of the passage of the amendment which made it unlawful for them to transport cattle by rail from a quarantine State in interstate commerce.

Judgment reversed.

MR. JUSTICE MCREYNOLDS took no part in the consideration and decision of this case.